IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTEENTH DAY OF DECEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION No. 26480 of 2005

Between:

Gulma Mohammed @ Shafeeq

..... PETITIONER

AND

The Court of VIII Junior Civil Judge,

City Civil Court, Hyderabad and another

.....RESPONDENTS

ORDER:

This writ petition is filed to call for the records in O.S.No.1612 of 2004 on the file of the 1st respondent Court and to prohibit the

1st respondent Court from any further adjudication once and for all in the matter by declaring that the 1st respondent Court has become Coram non-judice on account of the Amendment Act XVII of 2005.

Heard the learned counsel for the petitioner and the learned counsel appearing for the 2nd respondent.

The petitioner is a defendant in O.S.No.1612 of 2004 on the file of the VIII Junior Civil Judge, City Civil Court, Hyderabad. The

2nd respondent herein filed the said suit against the petitioner for his eviction from the petition schedule property and to deliver the vacant possession of the same and also to pass a decree for arrears of rents and mesne profits at the rate of Rs.5,000/- per month from 01.03.2004 with interest. In the suit, it is pleaded that the monthly rent for the schedule premises is Rs.3,465/- and the plaintiff has issued a notice to the defendant therein on 28.12.2003 demanding for payment of arrears of rent of Rs.41,589/- and also termination of the tenancy. The defendant gave reply to the said notice.

The learned counsel for the petitioner submits that as admittedly the rent payable by the petitioner herein, as pleaded by the

2nd respondent is less than Rs.3,500/-, and as per the A.P.Buildings (Lease, Rent and Eviction) Control (Amendment) Act, 2005 (Act No.17 of 2005) (for short 'the Amended Act'), under Section 32(c), the building fetching the rent of less than Rs.3,500/- (Rupees three thousand and five hundred only) per month, situated in the Municipal Corporation, will come within the ambit of the provisions of Amended Act, and therefore, the 1st respondent Court cannot have any jurisdiction to entertain the civil suit for eviction of the petitioner.

The learned counsel for the petitioner has not stated anything about the age of the building. Under Section 32(b) of the Amended Act, any building constructed or substantially renovated, either before or after the commencement of the Act for a period of fifteen years from the date of completion of such construction or substantial renovation, the provisions of the Act will not apply.

The learned counsel for the petitioner submits that there are no pleadings in the alleged civil suit filed by the 2nd respondent with regard to the age of the building, and in the absence of any such pleading, the criteria of the rent alone shall be taken into account, but not the age of the building. I am unable to accept the said contention.

Under the provisions of the old Act, the building must be more than 10 years old and the rent must be more than Rs.1,000/- for initiating rent control proceedings, and therefore, there was no need or any necessity for the petitioner to plead with regard to any facts about the age of the building as the rent is Rs.3,465/- per month. But, however, if the amended Act comes into operation by the date of filing of the said suit, it is for the petitioner, who is defendant in the suit, to plead and prove before the civil Court to prove that the age of building more than fifteen years old and get the suit dismissed on the ground that the age of the building is more than 15 years.

I do not see any grounds to come to a conclusion that the 1st respondent Court has no jurisdiction to entertain or to continue the proceedings in O.S.No.1612 of 2004. In the absence of any admitted facts with regard to bar of legal provisions to entertain and to continue the proceedings in the civil suit, I am unable to accept the contention of the learned counsel for the petitioner that the 1st respondent Court is estopped from continuing the proceedings in O.S.No.1612 of 2004.

Accordingly, the Writ Petition is dismissed. No order as to costs.

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V.ESWARAIAH,J

Dated: 13.12.2005

Dsr

Note:

Issue CC in 7 days

B/o

Dsr